

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

WILLIAM K. KING

Claim No. CU - 1911

Decision No. CU - 5202

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$432,500 was presented by WILLIAM K. KING, and is based on the asserted loss of real and personal property, and stock interests in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant describes his losses as follows:

1. Residence at Mercedes Arango 8 Cabaiguan, Las Villas	\$ 45,000
2. Home at Mercedes Arango 8 rear	3,000
3. Three rental houses, Central Highway and Calle Novena del Oeste	14,000
4. Farm at Yaguajay, yielding no income	50,000
5. Refineria Cabaiguan, S.A., 2,000 shares	160,000
6. Transporte Reca, S.A., 500 shares	40,000
7. Dixie Drilling Co., of Cuba 1,000 shares	70,000
8. Atlas Drilling Co., S.A., 1,000 shares	40,000
9. Personal property	10,500
	<u>\$432,500</u>

Improved Realty
Items No. 1, 2 and 3

On the basis of the entire record, including a letter of May 21, 1959, by a Cuban lawyer and notary, and documents emanating from the Ministry for the Recuperation of Misappropriated Property, the Commission finds that claimant owned the properties described in Items 1, 2 and 3, and that they were effectively confiscated by the Government of Cuba on June 2, 1959.

(See Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, 1967 FCSC Ann. Rep. 52.) One of the three properties in Item 3 was thereafter used as a Government Office. Further, claimant was given temporary permission to use his residence (Item 1) although it was not restored to him.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ

from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Other than claimant's assertions of value, the record contains only the descriptions of the improvements on Items 1, 2 and 3. Item 1 was described as having five bedrooms, and three baths, and presumably other usual rooms. Item 2 was described as a one-bedroom home with a double garage. Item 3 was described as three houses: 2 bedrooms, one bath, apparently in each. The three rental properties in Item 3 were said to have yielded \$1,800 yearly rental. On the basis of this record the Commission finds that the properties had the following values:

1. Residence at Mercedes Arango 8	\$13,065
2. Mercedes Arango 8, rear	3,000
3. Three rental houses	<u>14,000</u>
	\$30,065

Under the Community Property Law of Cuba, claimant's spouse, whose nationality is not of record, had a one-half interest in these properties. Accordingly, the Commission finds that claimant suffered losses in the amount of \$15,032.50 within the meaning of Title V of the Act.

4. Farm. Claimant states that he purchased this property by check September 12, 1958 for \$50,000 and that it was registered in Yaguajay, by Escritura Publica No. 105. Claimant referred to this property in his statement of April 29, 1960, to the United States Embassy. At that time he described it as a farm called "Rosa" which proceeded from a larger farm named "El Principal" known as Sitio Laguna, Mayajigua Ward, District of Yaguajay, Remedios, which farm had an area of 10-1/2 caballeria.

However, a report from abroad indicates that no such property has been found registered in claimant's name, nor was the transaction affirmed by the notary to which reference had been made. Under these circumstances the Commission finds that claimant has not met the burden of proof in that

he has failed to establish ownership and taking of this property by the Government of Cuba. Accordingly this item of claim is denied.

STOCK INTERESTS

5. Refineria Cabaiguan, S.A., hereafter referred to as Refineria
6. Transporte Reca, S.A., hereafter referred to as Transporte
7. Dixie Drilling Co. of Cuba, hereafter referred to as Dixie
8. Atlas Drilling Co., S.A., hereafter referred to as Atlas

In connection with these properties, claimant has stated that Dixie was purchased by him for \$200,000 from Dixie Drilling Co. of Dallas, Texas, in 1957; and that the equipment of Atlas was purchased by him in 1959 in Havana from National Supply Co., of Houston. Claimant stated that he moved to Cuba in 1947, one of a small group which organized, bought, imported and built an oil refinery to refine Cuban produced crude oil, and that this was the only one of its kind as the larger refineries in Havana were importing their crude oil. Further he states that Cuban production dropped and that he was the only American remaining, that he joined with Cuban acquaintances in new oil production with modern equipment and methods, which developed the company into a very successful operation, including production, transportation, distribution, sales, etc., and that thereafter he purchased the properties herein claimed.

In his statement of April 29, 1960 (supra) claimant asserted that he owned 20% of the shares of Refineria, which owned a refinery in Cabaiguan; and 20% of the shares of Transporte, which distributed the products refined by Refineria. In that statement he did not mention Dixie or Atlas.

With respect to Refineria, the record includes an affidavit from the former president thereof who affirms that the paid-up capital was \$70,000, accumulated earnings \$742,000 and that claimant's 20 per cent interest had thus a value of \$162,400.

As to Transporte the record includes affidavits of the former president, and of the former accountant therefor, which recite that the assets had a depreciated value of \$200,000 and that claimant's 20% interest amounts to \$40,000.

The records of the Commission reflect that Refineria was intervened by the Government of Cuba on April 6, 1959; and that Transporte was confiscated by Cuban Resolution 1827, published on February 11, 1960 (pursuant to Law 715). No specific information has been found as to any taking of Dixie or Atlas.

The record, however, contains no stock certificates, or other probative evidence of claimant's asserted ownership of Refineria and Transporte and even if claimant's asserted interests in these entities were fully established, no balance sheets or other financial data has been submitted in support of the asserted values.

As to Dixie, the record contains copies of stock certificates reflecting 50 shares were transferred to claimant and thence to Atlas. There are copies of two Atlas stock certificates, one for 500 shares, issued to Dixie; and one for 500 shares issued to one Gordon D. Andrew and transferred to claimant.

However, apart from the extent of claimant's ownership in these last two entities, the record does not contain evidence in support of the asserted values. Such information was suggested to claimant, as to all four entities, by Commission letters of June 28, 1967, September 1, 1967, June 30, 1969 and on April 15, 1970 it was suggested to claimant that he submit any further evidence he wished to have considered, but such was not received.

The record does include a copy of Minutes of a Meeting of the Delegate Council of Dixie, held on June 24, 1958 at which time it was resolved to recommend that the Board of Directors authorize the Second Vice President of the corporation to execute a contract assigning to certain individuals all rights of Dixie under a contract with American Drilling & Exploration Co., and Refineria, to the end of liquidating an indebtedness of \$40,154.04 of Dixie. This hardly establishes the values asserted by claimant.

Further, the record includes letter of October 21, 1960 from Walter G. Hartley & Son to claimant, referring to a telephone conversation of October 14, 1960, and cancelling coverage on a \$70,000 rig stated to have

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been confiscated on or about October 14, 1960. The letter further provided a release form. However, the record does not establish whether this rig belonged to claimant or to one of the entities involved in this claim. No specific claim has been made for this item.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish the extent of his ownership in the above listed entities, and the value thereof. Accordingly, these items of claim are denied.

PERSONALTY

Claimant asserted claim for personalty in the amount of \$10,500, described as furniture, autos, clothing, etc. In his statement of April 29, 1960, he stated that jewelry and household goods to a value of \$6,000 were confiscated, as well as refrigerators, television sets, electrical appliances, furniture, kitchen equipment and other movable property which he estimated at \$6,000. He also listed two jeeps at \$4,500 .

By the Commission letter of June 28, 1967 it was suggested he describe this property in detail. Further suggestions were made in Commission letters of March 26, 1968 and June 30, 1969. Such evidence has not been received. No basis is shown for finding ownership or evaluating a loss of personal property.

The Commission is thus constrained to find that claimant has not met the burden of proof in this respect. Accordingly, this item of claim is hereby denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

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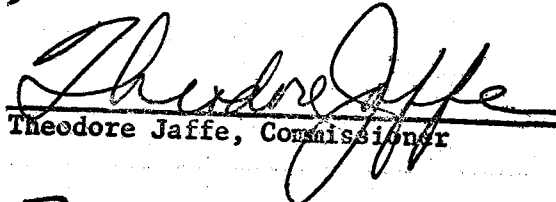
CERTIFICATION OF LOSS


The Commission certifies that WILLIAM K. KING suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifteen Thousand Thirty-Two Dollars and Fifty Cents (\$15,032.50) with interest at 6% per annum from June 2, 1959 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 22 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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